

Attachment to Independent Case Review Report  
For CDRU # 694 Case file # 95-284992.

Material Examiner: Malone (RQ)

Remarks:

Case resulted in trial, transcript available.

CRM - 11169

## INDEPENDENT CASE REVIEW REPORT

Independent Review conducted by: Steve Robertson

Area(s) of Expertise: Hair and Fiber

Review commenced at: 11:45 AM (Time), 03/12/2001 (Date)

File #: 95-284992

Laboratory #(s): 80920042

81101048

90524023

### Examiner(s) & Symbols

|                             | Reviewed                          | Not Reviewed                      |                             | Reviewed                 | Not Reviewed             |
|-----------------------------|-----------------------------------|-----------------------------------|-----------------------------|--------------------------|--------------------------|
| <u>RQ</u>                   | <u>X</u> <input type="checkbox"/> | <input type="checkbox"/>          | <u>                    </u> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>WP</u>                   | <input type="checkbox"/>          | <u>X</u> <input type="checkbox"/> | <u>                    </u> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>                    </u> | <input type="checkbox"/>          | <input type="checkbox"/>          | <u>                    </u> | <input type="checkbox"/> | <input type="checkbox"/> |

### Materials Reviewed

Trial testimony transcript(s) of: Michael Malone

Testimony Date(s): June 6, 1989 Pages: 1036-1056

### Laboratory Report(s):

Laboratory Number: 80920042/81101048 Date: Feb 27, 1989

Laboratory Number: 90524023 Date: May 30, 1989

Laboratory Number:                      Date:                     

Examiner Bench Notes of: RQ

Laboratory Number: 80920042/81101048

90524023

Page 1 of 4

Initials: SR

CRM - 11170

Was any other material reviewed? ☒ Yes ☐ No

If yes, please identify and/or describe the material: Submitting agency letters (dated 9-14-88, 10-26-88, 5-1-89, 5-23-89)

### Results of Review

File #: 95-284992 Item or Specimen # Reviewed: Q1-Q8, Q13-Q37, K1, K4, K7

#### Review of Laboratory Report(s) and Bench Notes:

Note: Numbered comments are required below or on additional pages for any "No" or "Unable to Determine" Responses

- 1) Did the examiner perform the appropriate tests in a scientifically acceptable manner, based on the methods, protocols, and analytic techniques available at the time of the original examination(s)?  
☐ Yes ☐ No ☒ Unable to Determine
- 2) Are the examination results set forth in the laboratory report(s) supported and adequately documented in the bench notes?  
☐ Yes ☒ No ☐ Unable to Determine

#### Review of Testimony:

Note: Numbered comments are required below or on additional pages for any "No" or "Unable to Determine" Responses

☐ Transcript not available.

- 3) Testimony consistent with the laboratory report(s)? ☒ Yes ☐ No ☐ Unable to Determine
- 4) Testimony consistent with the bench notes? ☒ Yes ☐ No ☐ Unable to Determine
- 5) Testimony within bounds of examiner's expertise? ☐ Yes ☒ No ☐ Unable to Determine

Page 2 of 4

Initials: SM

Comments

(Set forth by above question #, if applicable.  
Use "Additional Comments" Sheet, if needed)

File #: 95-284992

#1: With microscopic hair comparison, even with the best notes, there is no way to determine the comparison was performed correctly.

#2: The examination results set forth in the laboratory report are supported by the bench notes, but the documentation is marginally adequate. The notes are not dated or initialed and are in pencil.

#5: Malone testified that, based on literature and his own personal experience, if he matched a hair to a person the chance of finding another individual with the same hair is about one in five thousand. The published literature Malone refers to has been the subject of much debate. The conclusions reached in this literature has not been duplicated, so using it to arrive at the one in five thousand chance is misleading. Malone's experience, as

Review completed at: 1:00 PM (Time), 03/12/2001 (Date)

Total time spent conducting review (to nearest 1/4 hour): 1:15 hours

I hereby certify that I conducted this review in an independent, unbiased manner and that the results of my review are fully documented on this report consisting of a total of 4 pages.



(Signature)

March 12, 2001

(Date)

Page 3 of 4

Initials: SR

Additional Comments  
(Set forth by question #, if applicable)

File #: 95-284992

#5 (continued): this reviewer has learned from reading numerous transcripts of his testimony, is that he claims to have examined hair from over ten thousand people and only 2-3 times has found the hair to be the same. This experience of his is not the same as comparing the hair from all 10,000 people to each other. Mafone's one in five thousand estimate, based upon his experience, is misleading and not supported by the forensic community (see US v Massey, 594 F.2d 676)